In the High Court of Judicature at Madras

Dated :- 21.11.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

W.A.Nos. 1547 to 1549 of 2000

1.

Asian Paints India Ltd.,
rep. By its Director. ... Appellants in all WAs/
Petitioner in WPs 12823,12824
and 12825 of 1990

Vs.

1. Union of India
rep. By its Secretary
Ministry of Finance
Government of India
New Delhi.

2. Customs, Excise and Gold (Control)
AppellateTribunal at Madras

3. The Collector of Central Excise
Appeals, 121, Nungambakkam High Road
Madras 34.

4. The Assistant Collector of Central Excise
Hyderabad I Division
CLS Building
Nampally Station Road
Hyderabad ... Respondents in all WAs/
Respondents in WPs 12823,
12824 and 12825 of 1990

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Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 5.6.2000 made in W.P.Nos.12823 to 12825 of 1990.

WP Nos. 12823 to 12825 of 1990:

Petitions under Article 226 of the constitution of India, praying that in the circumstances stated therein, and in the respective

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affidavits filed therewith the High Court will be pleased to issue writs of

(1) declaration declaring that Notification No.177/86-CE dated 1st March 1986 to the extent that it restricts the modvat credit of duty to only certain inputs as listed in column 2 of the table annexed to thereto is ultravires Rule 57 of the said Rules (WP No.12823/90).

(2) Certiorari calling for the records pertaining to the orders of the third respondent, the Collector (Appeals) and the Tribunal made in order No.356/90 dated 30.4.90 and after giving into the legality, validity and propriety of the same quashing and or setting aside the same (WP No.12824/90).

(3) Mandamus directing the respondents to

(i) forthwith with draw and/or cancel the impugned notification and the orders of the third respondent the Collector (appeals) and the Tribunal.

(ii)forbear from taking any action in pursuance or in implementation of the aforesaid order and

(iii) forthwith permit the petitioner to take credit of duty on all duty-paid inputs used by them in the manufacture of the final products specified in the impugned notification (WP No.12825/90) respectively.

For Appellant:- Mr.R.Premkumar
For Respondents:- Mr.V.T.Gopalan, Addl. Solicitor General
Assisted by Mr.P.Wilson, Assistant Solicitor General

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The writ appeals are filed against the order of the learned single Judge dated 5.6.2000 made in W.P.Nos.12823 to 12825 of 1990.

2. In the writ petitions a notification issued in No. 177/86-WE dated 1st March 1986 to the extent that it restricts the Modvat credit of duty to only certain inputs as listed in column 2 of the table annexed to the notification was sought to be declared as ultra vires of Rule 57-A of the Central Excise Rules 1944 on the premise that under Rule 57-A the legislature has conferred power on the Central Government only to specify the final products and specified duty. In other words Rule 57-A nowhere uses the words "as may be specified" in relation to "inputs" and the Central Government

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has not empowered its delegate to specify the inputs and thereby restrict the list of inputs, regarding which the credit may be availed of, if duty is paid on the inputs. According to the appellant, the Central Government has exceeded its power and jurisdiction as a delegate and the notification issued by the Central Government to the extent that it is not in strict conformity with the ambit and scope of Rule 57-A of the Rules, is ultra vires, illegal and void.

3. This Court after hearing the learned counsel on either side in an elaborate fashion, considering the argument in extenso and after taking note of the Rule 57-A has held that a careful reading of the Rule 57-A, showed that the Central Government was empowered to specify in the notification the final excisable goods eligible for MODVAT credit which are referred to as final products. The Central Government was also empowered to notify in the said notification the duties for the purpose of allowing credit of any duty of excise or the additional duty under Section 3 of the Customs Tariff Act, 1975 which were referred to as "specified duty" paid on the goods used in or in relation to the manufacture of the said final products which were referred to as inputs. The Court further proceeded that though the expression "inputs" was not qualified by the expression "as specified in the notification" the rule did not stop with the expression "inputs", but proceeded further by use of the conjunction word "and" following the word "inputs' with the last part of the rule and the entire rule had to be read as a whole. If such exercise has been done, the rule indicated that the utilisation of credit to be allowed towards payment of excise duty leviable on the final products would be subject to the provision of the Section and the restriction and condition that may be specified in the notification. The learned single Judge finally held that the notification was not in any way repugnant to the rule making authority under rule 57-A and the intention of the rule making authority was not to allow credit to all inputs. The credit was available and restricted to the inputs specified in the notification which were used in or in relation to the manufacture of final products.

4. We heard the arguments of the learned counsel appearing for the appellant, who reiterated the very same arguments, which has been argued before the learned single Judge.

5. On a reading of the order of the learned single Judge, we are of the considered view that Rule 57A cannot be regarded as extraneous to the statutory provisions or repugnant to the statute, which empowers the Central Government to exclude some inputs or specify certain inputs for availing the benefit of Modvat Credit. The Rule, which is generally an extension of statutory provisions can be questioned only if the Rule is over-edged the substantive Act or repugnant to the substantive statutory provisions. In the absence of anything to attribute that the rule which has been framed is

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repugnant to the main statutory provision, the assessee cannot have any legal right to put in issue a beneficial notification, which confers certain benefit under the Modvat Credit scheme in respect of certain category of inputs. Hence we do not find any reason to interfere with the order of the learned single Judge. The writ appeals are dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

krr/

To

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4. The Assistant Collector of Central Excise
Hyderabad I Division
CLS Building
Nampally Station Road
Hyderabad

+3ccs to M/s. King & Partridge, Advocate Sr 69080 to 69082
+1cc to Mr.P.Wilson, Advocate Sr 69372

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km/13.12.

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